HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 832/2004 (M/S)

Anil Pant
S/o late Sh. Pitamber

vs

District Judge Dehradun and
others.

Approved for reporting

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~~Not approved for reporting~~

Date of decision 3.9.2004

Initial of Judge

HIGH COURT OF UTARANCHAL AT NAINITAL

Writ Petition No. 832 (MS) of 2004

Anil Pant
S/o Late Sh. Pitambar
Dutt Pant.
R/o Dobhalwala Dehradun

..... Petitioner.

Vs

District Judge Dehradun and others.

..... Respondents

Counsel for the petitioner Sh.Gopal Narain
Standing Counsel for the respondents.

Dated:3-9-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Gopal Narain learned counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the impugned order dt. 15-4-2004 and 12-5-2004 passed by courts below.

Brief facts giving rise to the present writ petition are that the petitioner had entered into an agreement for construction of house on 7-1-2003 with the respondent No.3 According to condition No.5, the construction of the house was to be completed within seven months and further according to agreement the payment shall be made to the respondent No. 3. However, if the construction of the house was not completed within agreed period and a bad material was used then the petitioner will inform to the respondent No.3. Respondent No.3

has filed an injunction against the petitioner being Original Suit No. 295 of 2003 along with the application for interim injunction.

Petitioner filed his written statement along with objections on the injunction application.

On 15-4-2004, the interim relief application 6C2 along with objection 16Cwas heard by the learned Civil Judge, who has allowed the interim application of the respondent No.3. Feeling aggrieved by the order dt. 15-4-2004, petitioner has filed an Appeal being M.C.A. No.54 of 2004 before the District Judge. The District Judge has admitted the appeal and directed the parties to maintain status quo by order dt. 12-5-2004.

According to the plaintiff he carried out the construction and he has stated that an amount of Rs. 1,36,941.70 is due to the defendant. Plaintiff therefore has stated that the defendant has no right to carry out the constructions. Learned Trial Court after taking into consideration the agreement between the plaintiff and the defendant on 7-1-2003 has allowed the interim application. The appellate court has also confirmed the order of injunction.

Counsel for the petitioner has submitted that the contract of service cannot be specifically enforced and at the best, the plaintiff can be compensated towards damages, the suit therefore under the Specific Relief Act 1963 is not maintainable.

However, since, the two courts below have granted the injunction in favour of the plaintiff, I decline to interfere under Article 226 of the Constitution of India. The suit is pending since 2003.

In view of the aforesaid, the injunction order granted by both the courts below shall be operative for a period of 2 months only. The

learned Judge shall expedite the hearing of the suit and decide the suit itself within a period of 3 months after filing of the certified copy of the order.

Subject to the aforesaid observation, the writ petition is disposed of. No order as to costs.

Dated:- 3-9-2004 (RAJESH TANDON J.)

M.K.